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JAMES EDWARDS

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

\* \* \*

JAMES EDWARDS,

Plaintiff,

vs.

ROCKWAY PRECAST, INC., a/k/a JENSEN  
PRECAST, DOE Defendants I through X,  
inclusive; and ROE CORPORATIONS A  
through Z, inclusive,

Defendants.

CASE NO.

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

This is a civil action seeking monetary relief for violations of federal civil rights laws and state law claims. In support of this Complaint, Plaintiff hereby alleges the following:

**JURISDICTION, VENUE, AND LEGAL BASIS**

1. This Court possesses jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1331 because Plaintiff's claims arise from Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et. seq.* and the Civil Rights Act of 1991, 42 U.S.C. 1981 *et. seq.* Additionally, the Court has supplemental jurisdiction over Plaintiff's state law tort claims pursuant to 28 U.S.C. § 1367 because the claims are substantially related to Plaintiff's federal claims.

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 since "a substantial part of the events or omissions giving rise to the claim[s] occurred" in Nevada.

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1           3.       This civil action is brought by Plaintiff Pursuant to federal common and statutory  
2 law and state common law.

3           4.       Plaintiff, JAMES EDWARDS in an adult individual currently residing in Clark  
4 County, Nevada. Plaintiff is an African American male.

5           5.       Defendant, ROCKWAY PRECAST, INC., a/k/a JENSEN PRECAST  
6 ("Rockway") is a corporation registered duly formed and existing under the laws of the State of  
7 Nevada and authorized to conduct business in Clark County, Nevada. Defendant operates a  
8 precast concrete products manufacturing and distribution company.

9           6.       The true names and capacities, whether individual, corporate, associate, or  
10 otherwise, of DOE Defendants I through X and ROE CORPORATIONS A through Z are  
11 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is  
12 informed and believes, and on that basis alleges, that each of the Defendants designated as DOE  
13 Defendants and ROE CORPORATIONS are responsible in some manner for the events and  
14 occurrences referenced in this Complaint, and/or owes money to Plaintiff and/or may be  
15 affiliated with one of the other Defendants or may claim some interest in the subject matter of  
16 this Complaint. Plaintiff will ask leave of the Court to amend this Complaint and insert the true  
17 names and capacities of DOE Defendants I through X and ROE CORPORATIONS A through Z  
18 when the identities of the same have been ascertained, and to join said Defendants in this action.

19           7.       Defendant has more than fifteen (15) employees and is thus subject to federal  
20 anti-discrimination laws. 42 U.S.C. § 2000e(b). As an entity operating and transacting business  
21 in Nevada, Defendant is also subject to the common and statutory laws of Nevada. Defendant is  
22 being sued herein for monetary damages.

23           8.       The true names of Defendants DOES I to X and ROE CORPORATIONS I to X,  
24 inclusive, are unknown to Plaintiff at this time and, therefore, Plaintiff brings suit against those  
25 individuals and entities by the foregoing fictitious names. Plaintiff alleges said Defendants are  
26 liable to Plaintiff under the claims for relief set forth below. Plaintiff requests when the true  
27 names of the DOE and ROE CORPORATION Defendants are known, this Complaint may be  
28 amended by inserting their true names in lieu of the fictitious names together with apt and proper

1 words to charge them.

2 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

3 9. Plaintiff filed a formal charge of discrimination with the United States Equal  
4 Employment Opportunity Commission ("EEOC") on or about June 16, 2014. Plaintiff's EEOC  
5 filing fulfilled his obligation to initiate an administrative claim before seeking relief in this  
6 Court.

7 10. In the EEOC filing, Plaintiff alleged facts demonstrating he had been subjected to  
8 illegal employment discrimination and harassment based on his race and perceived sexual  
9 orientation. Additionally, Plaintiff alleged facts indicative of retaliation for bringing to light the  
10 discrimination and harassment he endured in the workplace.

11 11. After investigating the matter, the EEOC provided Plaintiff with a "Notice Suit  
12 Rights" dated October 27, 2015. The EEOC's letter notified Plaintiff any litigation must be filed  
13 within ninety (90) days of his receipt of the EEOC's Notice of Suit Rights.

14 12. Plaintiff timely files this Complaint within the 90-day requirement.

15 **FACTUAL BACKGROUND**

16 13. Plaintiff was hired by Rockway on August 14, 2011 for employment as a cement  
17 worker. Plaintiff previously worked for Rockway from approximately 2001 to 2005. During both  
18 periods of employment, Plaintiff maintained a clean work record with no verbal or written  
19 disciplinary warnings.

20 14. Plaintiff's supervisors were Martin (last name unknown) (Hispanic Male), Mack  
21 (last name unknown) (Race unknown), and Jeremiah (last name unknown) (race unknown).  
22 Plaintiff's Plant Manager was Brian (last name unknown) (Caucasian Male). Brian was in charge  
23 of supervising all personnel and, as supervisor, was responsible for protecting employees from  
24 discrimination and/or harassment causing a hostile work environment.

25 15. Starting approximately on February 13, 2014, Plaintiff's coworker Cameron (last  
26 name unknown) (Caucasian Male), the son of the former plant manager, began placing a cement  
27 penis on Plaintiff's work space daily. When Plaintiff informed his managers Brian, Martin and  
28 Mack of Cameron's explicit sexual harassment and showed them the cement penis, they laughed

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1 at Plaintiff's complaints and dismissed him without addressing Cameron's reprehensible  
2 workplace conduct.

3 16. After this incident, and without any formal disciplinary action by management,  
4 Plaintiff continued to endure the systematic, emotionally challenging harassment from his  
5 coworkers on a near daily basis. For instance, Plaintiff suffered repeated verbal harassment from  
6 a supervisor, Jeremiah, who repeatedly insinuated Plaintiff was homosexual.

7 17. Defendant was fully aware of the harassment.

8 18. Still, this pervasive degradation continued despite Plaintiff's attempts to notify  
9 management of his constant sexual and racial harassment. Cameron and another coworker, Joel  
10 Rieno (Race unknown), persistently bullied Plaintiff for listening to PBS Radio and baroque  
11 music such as Bach and Handel. They stated on multiple occasions that Plaintiff "must be gay"  
12 because "black men don't listen to that".

13 19. While Plaintiff suffered a constant barrage of sexual and racially charged  
14 harassment from managers and coworkers, the depth of his harassment was not limited to verbal  
15 hostility. Plaintiff's coworker Darian (last name unknown) (Race unknown), was physically  
16 abusive towards Plaintiff and other coworkers. Darian would "knee butt" (an act wherein one  
17 forcefully slams their knee into the buttocks of another) Plaintiff while Cameron, Mack, and Joel  
18 would laugh at Plaintiff's misfortune.

19 20. After nine months of complaining of severe physical, sexual and racial  
20 harassment resulting in a hostile workplace, Rockway retaliated against Plaintiff by terminating  
21 his employment on April 25, 2014. While Rockway alleged that Plaintiff had a "No call, No  
22 show"<sup>1</sup> on April 24, 2014 requiring immediate termination, Plaintiff asserts he called into work  
23 on April 23, 2014 and April 24, 2014 and spoke with his supervisor Mack regarding his  
24 necessary absence from work. Plaintiff explained to Mack that he had to gain custody of his  
25 daughter from his ex-girlfriend and enroll her in school. Despite following protocol Plaintiff was  
26

27 <sup>1</sup> Ironically, allegedly failing to show for work or call in to explain an absence is violative of Rockway's  
28 employment policy wherein discrimination and harassment are acceptable actions by both employees and  
management.

1 informed on April 25, 2014 by Greg Taylor, a manager at Rockway, he was terminated for  
2 failing to call or show up for work on April 24, 2014.

3 21. As a final farewell, Plaintiff encountered perhaps the most heinous harassment by  
4 his coworker, Cameron. On the morning of April 25, 2014 Plaintiff noticed his work helmet was  
5 spray painted with the words "RIP You Black Nigger". Not only is this conduct inexcusable, but  
6 it indicates Plaintiff's coworker was informed of Plaintiff's impending termination. Clearly  
7 Cameron, as the son of the former plant manager, had a close relationship to management that  
8 explains why his hostile conduct was never reproached by management despite Plaintiff's  
9 frequent complaints.

### 10 **FIRST CAUSE OF ACTION**

#### 11 ***Race Discrimination Based Upon Hostile Work Environment***

12 22. Plaintiff repeats and reaffirms the allegations set forth and incorporates the same  
13 by reference as though set forth herein.

14 23. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et. seq.*, prohibits  
15 employers with fifteen (15) or more employees from discriminating against any individual  
16 employee with respect to his or her compensation, terms, conditions or privileges of employment  
17 due the employee's race, color, religion, sex or national origin. To prevail on a hostile workplace  
18 claim premised upon "race", a plaintiff must show (1) that he/she was subjected to verbal or  
19 physical conduct of a racial nature; (2) that the conduct was unwelcome; and (3) that the conduct  
20 was sufficiently severe or pervasive to alter the conditions of the plaintiff's employment and  
21 create an abusive working environment.

22 24. In this case, Defendant, by and through the actions of Martin, Mack, Jeremiah,  
23 Brian, Cameron and Joel subjected Plaintiff to a hostile and discriminatory work environment  
24 based upon his race/ethnicity ("African American") that culminated with his retaliatory  
25 termination. Plaintiff was the victim of repeated racial harassment from his coworkers in a  
26 manner which was deeply offensive and based solely upon his racial background. For instance,  
27 Plaintiff was constantly mocked by Cameron and Joel for listening to PBS Radio and baroque  
28 music such as Bach and Handel because "black men don't listen to that". Then, on Plaintiff's last

1 day of employment with Rockway, Cameron spray painted Plaintiff's helmet with the words  
2 "RIP You Black Nigger".

3 25. This unwelcome, pervasive harassment altered the working conditions of  
4 Plaintiff's employment culminating in a highly abusive working environment. When Plaintiff  
5 complained, Martin, Mack and Brian ignored his pleas and eventually terminated Plaintiff in a  
6 protective act of retaliation.

7 26. The foregoing conduct constitutes illegal racial discrimination prohibited by 42  
8 U.S.C. § 2000e *et. seq.*

### 9 **SECOND CAUSE OF ACTION**

#### 10 ***Sex Discrimination Based Upon Hostile Work Environment***

11 27. Plaintiff repeats and reaffirms the allegations set forth and incorporates the same  
12 by reference as though set forth herein.

13 28. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et. seq.*, prohibits  
14 employers with fifteen (15) or more employees from discriminating against any individual  
15 employee with respect to his or her compensation, terms, conditions or privileges of employment  
16 due the employee's race, color, religion, sex or national origin. To prevail on a hostile workplace  
17 claim premised upon "sex/gender", a plaintiff must show (1) that he/she was subjected to verbal  
18 or physical conduct of a sexual nature; (2) that the conduct was unwelcome; and (3) that the  
19 conduct was sufficiently severe or pervasive to alter the conditions of the plaintiff's employment  
20 and create an abusive working environment.

21 29. In this case, Defendant, by and through the actions of Martin, Mack, Jeremiah,  
22 Brian, Cameron, and Darian subjected Plaintiff to a hostile and discriminatory work environment  
23 based upon his sex/gender that culminated with his retaliatory termination. Plaintiff was the  
24 victim of repeated verbal and physical sexual harassment from his managers and coworkers in a  
25 manner which was deeply offensive and based solely upon his perceived sexual orientation. The  
26 harassment began with Cameron using workplace equipment to create a cement penis and place  
27 said penis on Plaintiff's work station. Further, Jeremiah, a supervisor at Rockway, would  
28 insinuate that Plaintiff was homosexual on a recurring basis. Additionally, Plaintiff was regularly

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1 told he “must be gay” by Cameron and Joel for listening to PBS Radio and baroque music such  
 2 as Bach and Handel. As if the verbal abuse was not enough, Plaintiff suffered physical sexual  
 3 harassment from Darian who would forcefully smash his knee into Plaintiff’s buttocks. The  
 4 frequent sexual harassment altered the working conditions of Plaintiff’s employment culminating  
 5 in a highly abusive working environment.

6 30. The foregoing conduct constitutes illegal sexual harassment prohibited by 42  
 7 U.S.C. § 2000e *et. seq.*

### 8 **THIRD CAUSE OF ACTION**

#### 9 ***Retaliation***

10 31. Plaintiff repeats and reaffirms the allegations set forth and incorporates the same  
 11 by reference as though set forth herein.

12 32. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et. seq.*, prohibits  
 13 employers with fifteen (15) or more employees from retaliating against any individual employee  
 14 for either (1) having opposed any practice made an unlawful employment practice under federal  
 15 anti-discrimination laws or (2) because he/she made a charge, testified, assisted or participated in  
 16 any manner in an investigation, proceeding, or hearing under federal anti-discrimination laws. To  
 17 prove retaliation, a plaintiff must show (1) that he/she was engaged in a protected activity, such  
 18 as opposing discrimination or participating in an investigation in discrimination; (2) that he/she  
 19 was thereafter subjected to an adverse employment action; and (3) that there is a causal link  
 20 between the protected activity and the adverse employment action.

21 33. In this case, Defendant, by and through its management employees subjected  
 22 Plaintiff to a hostile and discriminatory working environment based on his race and sex. Plaintiff  
 23 engaged in protected activity by opposing the unwanted harassment and reporting the conduct to  
 24 management. After complaining several times, management failed to discipline the offending  
 25 employees or alter Plaintiff’s work conditions resulting in continued and escalating harassment.

26 34. Rockway’s handling of Plaintiff’s complaints and subsequent termination reeks of  
 27 ineptitude and irony. The fact that Plaintiff was terminated for an alleged “No call, No show”  
 28 policy while he suffered repeated illegal racial and sexual harassment is preposterous. Clearly,



1 management's close personal relationship with one of the primary offenders, Cameron, is the  
2 causal link between Plaintiff's protected conduct and his subsequent wrongful termination.

3 35. The foregoing conduct constituted illegal retaliation prohibited by 42 U.S.C. §  
4 2000e *et. seq.*

#### 5 **FOURTH CAUSE OF ACTION**

##### 6 ***Race Discrimination under § 1981***

7 36. Plaintiff repeats and reaffirms the allegations set forth and incorporates the same  
8 by reference as though set forth herein.

9 37. The Civil Rights Act of 1991, 42 U.S.C. § 1981 ("Section 1981") prohibits race  
10 discrimination in the making and enforcing of contracts. *See McDonald v. Santa Fe Trail*  
11 *Transp. Co.*, 427 U.S. 273, 295 (1976). The clause "to make and enforce contracts" includes "the  
12 making, performance, modification and *termination* of contracts." 42 U.S.C. § 1981(b)  
13 (emphasis added). To succeed in bringing a Section 1981 claim plaintiff must prove by a  
14 preponderance of the evidence (1) that the plaintiff's employment contract was terminated; and  
15 (2) the plaintiff's race was a motivating factor in the defendant's decision. In showing that race  
16 was a motivating factor a plaintiff is not required to prove race was the sole motivation or even  
17 the primary motivation for the defendant's action. *Costa v. Desert Palace, Inc.*, 299 F.3d 838,  
18 853-59 (9th Cir. 2002) (en banc), *aff'd*, 539 U.S. 90 (2003). Plaintiff need only prove that race  
19 played a motivating part in the decision even though other factors may have also motivated the  
20 defendant.

21 38. In this case, there is no question that Plaintiff was terminated from his  
22 employment. Despite Plaintiff's desperate attempts to inform management of his continued racial  
23 harassment, Rockway did not attempt to adhere to federal anti-discriminatory laws or follow any  
24 policies and procedures that may be in place. Yet, when allegedly faced with a violation of  
25 company policy regarding a "No call, No show" by an employee with an otherwise pristine  
26 employment record, Rockway terminated Plaintiff without hesitation. This clear disparate  
27 treatment shows the sole reason for Plaintiff's termination arose out of the hatred and inherent  
28 bias towards Plaintiff because of his race.



39. Wherefore, Plaintiff demands judgment against Defendant for compensatory and punitive damages, as well as any other equitable remedies deemed just and equitable, in an amount to be adduced at trial by jury in this matter. Further, Plaintiff demands compensation for the costs of this action, including attorneys' fees and such other relief deemed just and equitable.

### **FIFTH CAUSE OF ACTION**

#### ***Intentional Infliction of Emotional Distress***

40. Plaintiff repeats and reaffirms the allegations set forth and incorporates the same by reference as though set forth herein.

41. Nevada common law recognizes the tort of "intentional infliction of emotional distress." To prevail on such a claim, a plaintiff must show: (1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress; (2) plaintiff's having suffered severe or extreme emotional distress; and (3) actual or proximate causation between the extreme and outrageous conduct and the emotional distress suffered by the plaintiff. *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 92 (1981).

42. In this case, the actions of Plaintiff's managers and coworkers were extreme and outrageous including, but not limited to, a cement penis, physical sexual harassment, and the use of the words "RIP you Black Nigger". This intentional, humiliating conduct caused Plaintiff severe emotional distress. Specifically, Plaintiff was admitted to University Medical Care ("UMC") on April 26, 2014. Plaintiff's discharge instructions indicated he was suffering from bronchitis and a hernia. Rockway's employees' conduct was both the actual and proximate cause of Plaintiff's emotional distress.

43. Wherefore, Plaintiff demands judgment against Defendant for damages in an amount to be adduced at trial by jury in this matter. Further, Plaintiff demands compensation for the costs of this action, including attorneys' fees and such other relief deemed just and equitable.

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**DEMAND FOR JURY TRIAL**

44. Pursuant to the Seventh Amendment of the United States Constitution, Plaintiff invokes his right to trial by jury in this civil action.

**RELIEF REQUESTED**

45. Wherefore, in light of the foregoing Complaint, Plaintiff requests the Court order the following relief in this matter:

- a. Set this matter for trial by jury on a date certain;
- b. Award Plaintiff general and compensatory damages in an amount not less than \$500,000;
- c. Award Plaintiff exemplary and punitive damages against Defendant, to the extent permitted by law, in order to deter future conduct;
- d. Award pre-judgment and post-judgment interest, as provided by law;
- e. Award Plaintiff costs and reasonable attorneys' fees; and
- f. For such other and further relief as the Court deems just and proper.

DATED this 9 day of December, 2015.

**KOLESAR & LEATHAM**

By: 

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